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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,770	07/08/2005	Luc Barre	BARRE1	3901
1444 7590 07/14/2008 BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303			EXAMINER HUYNH, KHOA D	
			ART UNIT 3751	PAPER NUMBER
			MAIL DATE 07/14/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/541,770	Applicant(s) BARRE, LUC	
	Examiner Khoa D. Huynh	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 1-7 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-19 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>7/8/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group II in the reply filed on 04/18/2008 is acknowledged. The traversal is on the ground(s) that it would not constitute a serious burden to examine all of the groups. This is not found persuasive because the entire application contains a number of inventions that are patentably distinct from one another and including divergent claimed subject matter that separate the species. And such recognized divergent subject matter separating the species is a burden to examination.

As indicated in the reply, the elected Group comprising claims 8-19 and new claim 21. Accordingly, claims 1-7 and 20 are withdrawn from further consideration as being drawn to the non-elected inventions.

The requirement is still deemed proper and is therefore made FINAL.

Claim Objections

2. Claims 1 and 21 are objected to because of the following informalities: line 1, the recitation "Apparatus for..." should be changed to read --An apparatus for...--.

Appropriate correction is strongly suggested.

3. Claim 18 is objected to because of the following informalities: line 1, the recitation "Apparatus according..." should be changed to read --The apparatus according...--. Appropriate correction is strongly suggested.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

Art Unit: 3751

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 8-19 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

Each of claims 8 and 21 recites "the control means are capable of passing from a stopped state t a state of leaving the communication clear and vice versa". Such recitations render the claims indefinite since it does not have detailed support in the instant specification. Since the claim does not clearly set forth the metes and bounds of the patent protection desired, the scope of the claims is unascertainable. Claims 2-19 depend from claim 8 and are likewise indefinite.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 8-19 and 21 (*as presently and best understood*) are rejected under 35 U.S.C. 102(e) as being anticipated by Nelson (7331341).

Regarding claims 8 and 21, the Nelson reference discloses an apparatus for manipulating a gas, i.e. anesthesia gas which is heavier than air gas. The apparatus comprises a chamber or plenum (54) having a closable cavity (128), a source of heavy gas (col. 5, lines 1-5; col. 7, lines 44-46) adapted to be in communication with the chamber to allow introduction of the heavy gas into the cavity, and a means (52) of controlling the fluid communication between the source of heavy gas and the cavity of the chamber, wherein the chamber comprises an upward opening (see Fig. 2B), and closure means (127) movable between a closed position in which the upward opening is closed and an open position in which the opening is left clear, wherein the control means (52) is capable of passing from a stopped state to a state of leaving the communication clear and vice versa, the control means (52) inherently being in the stopped state when the mentioned closure means (127) is in an open position (to prevent the anesthesia gas from escaping) , and the closure means (3) inherently being in a closed position when the control means (6, 7) are in a clear (operable) state, and comprises a negative pressure source and means of establishing a negative pressure (at 83) in a peripheral area at the top of the chamber, which are supplied by the negative pressure source and which suck heavy gas from the chamber and into a confined enclosure (col. 8, lines 8-53; col. 9, lines 20-35; col. 10, lines 12-20).

Regarding claims 9-19, the apparatus also comprises, in an external peripheral area at one of the bottom side of the chamber, means (132) of recovering heavy gas flowing along the chamber from top to bottom, wherein the means of establishing a negative pressure function continuously during operation, wherein the control means

Art Unit: 3751

(52) comprises a valve mechanism (for controlling the on/off and flow rate of the heavy gas, see col. 7, lines 47-50) arranged in a pipe connecting the heavy gas source and the cavity of the chamber, and a control element for controlling the valve in the stopped state when the closure means (127) are in the open position and which also causes the closure means (127) to be in the closed position when it is in a release state, wherein the closure means consist of a cover (127) slidably received in a runner (145) provided at the upward opening of the chamber (Fig. 2B), wherein the means of establishing a negative pressure comprise a frame (152) formed by a hollow profile which is supported by the chamber at the periphery of its upward opening and which, on the sides, overhangs part of the cavity (128) of the chamber and therefore the cover (127) in the closed position while it is subjacent to the cover in the closed position, and in that the hollow profiled section is provided, facing the cover in the closed position, with suction openings, while it is in communication with the source of negative pressure through the appropriate pipe (152), wherein the said recovery means comprise a trough or opening (129) open upwards and a support plate (122d) for the chamber which is supported essentially in the opening at a distance therefrom, wherein the trough has the negative pressure means (at 83) which act to suck the heavy gas recovered by the trough or opening.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (571) 272-4888. The examiner can normally be reached on M-F (7:00-3:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Khoa D. Huynh/
Primary Examiner, Art Unit 3751